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No. 623

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

THE TRAVELERS INSURANCE COMPANY,
Petitioner,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESTATEMENT OF QUESTION PRESENTED FOR REVIEW

In a counterclaim by the insurer, Travelers Insurance Company, against its insured, The Pennsylvania Railroad Company, seeking a construction of the clause "while being transported to or from work", as contained in an indemnity endorsement to a liability insurance policy in effect between the parties, did the Court of Appeals properly find more than one reasonable interpretation of this clause, thus requiring the application of the construction most favorable to the insured?

SUPPLEMENTAL STATEMENT OF THE CASE

A. Developments in Courts Below

This controversy arose when Travelers Insurance Company refused to assume the defense of two Federal Employers Liability actions filed against its insured, The Pennsylvania Railroad Company.

The insurance policy involved (R. 19a) was an automobile liability policy which Travelers Insurance Company issued to cover buses used by The Pennsylvania Railroad Company. The Pennsylvania Railroad Company was a named insured (R. 21a). The policy provided indemnity coverage for The Pennsylvania Railroad Company from any liability to which it might be exposed as a result of its employees being injured while being transported *"to or from work"* in or on any vehicle insured under the policy. (R. 20a).

Cook and O'Hara, employees of the insured, were members of the track repair and maintenance crew and, on October 8, 1951, were traveling in one of the buses to Upper Sandusky, Ohio where they were to perform work as assigned by their foreman. During the trip, the bus left the highway, struck a farmhouse and both men were injured. They filed suits in the District Court under the Federal Employers' Liability Act against The Pennsylvania Railroad Company. When Travelers Insurance Company refused to defend these actions, The Pennsylvania Railroad Company filed third party complaints against Travelers Insurance Company and the owner of the bus seeking indemnity against any judgments which might be rendered in the personal injury suits. (R. 6a-10a)

Travelers Insurance Company filed an Answer and Counterclaim denying coverage under the policy and seeking a declaratory judgment that coverage did not extend

to include employees injuries under the facts of the particular accident and that it had no duty to defend. (R. 11a-17a)

The District Court ordered a non-jury trial of the insurance coverage issue separately from, and in advance of the trial of the issues raised in the original complaints. That Court construed the policy provisions so as to exclude coverage under the circumstances of the accident. (R. 38a-39a)

The Court of Appeals for the Sixth Circuit, in a unanimous opinion, reversed the District Court and held (1) that the policy terms were ambiguous; (2) that the Ohio law required an interpretation of the ambiguity liberally in favor of the insured; and (3) that the terms of the policy provided coverage for the insured under the circumstances of the accident. (Petition 28-29; Opinion, Petition 22-27)

B. Undisputed Facts

It is agreed that no dispute of fact exists between the parties, as all the material facts were stipulated before trial and were read into the record in the District Court. (R. 44a-47a) (Petition, 3)

While the summary of facts stated in the Petition is substantially correct, Petitioner has neglected to emphasize certain important facts and has overlooked others. We therefore supplement the statement of facts as follows:

1. The endorsement (Ex. 1-B; R. 20a) extending coverage to The Pennsylvania Railroad Company against damages because of bodily injuries to its employees is an *indemnity agreement* running from Travelers Insurance Company to its insured and is not "an exception to an exclusion clause" as claimed in Petitioner's statement of the question presented. (Petition, 2)

2. Said endorsement (Ex. 1-B; R. 20a) specifically provides that its provisions are controlling over any other provisions of the policy which are inconsistent with it.

3. There were four different camp sites and one repair work site reported in the stipulated facts. (R. 45a) These were the former camp sites of the repair and maintenance crew at Dunkirk and Ada, Ohio, and the new camp sites at Bucyrus and Upper Sandusky, Ohio. The crew had worked out of the existing camp sites for several days prior to the accident on October 8, 1951. (R. 45a) The construction or repair work site along the Pennsylvania tracks was located about one and a half or two miles east of the Upper Sandusky camp site. (R. 46a)

4. Cook and O'Hara had various work assignments to perform with the track maintenance and repair crew. Cook was the camp overseer and had charge of the railroad cars, fixing water pipes, screens, windows and general maintenance and repair of the camps, the preparation of noon lunches for the foremen and machine operators, driving of buses, and the running of errands. (R. 45a) O'Hara's work comprised that of track repairman, bus driver, machine operator and miscellaneous duties to which the foreman might assign him. (R. 45a)

5. The Upper Sandusky camp consisted of railroad cars which were used as living quarters for the laboring members of the crew and the Bucyrus camp housed the supervisory personnel. Certain of the cars in the Upper Sandusky camp were kitchen and dining cars and, when that camp was located at Dunkirk, wooden frames and screening were erected between the cars for sanitary purposes. (R. 45a, 46a) When this camp was moved from Dunkirk to Upper Sandusky, the screening equipment was dismantled for the purpose of making the trip. Upon setting up the camp at Upper Sandusky it was discovered that this equipment had not been transported to the new camp site. It was necessary, therefore, to procure this equipment. (R. 46a)

6. Cook and O'Hara commenced the day's work on October 8, 1951 when they left their camp at Bucyrus and proceeded in one of the buses to the Upper Sandusky camp. Each of them picked up a group of the laboring personnel and transported them in buses to the job site along the tracks which was about two miles east of the Upper Sandusky camp. (R. 46a)

7. Foreman Klinefelter then ordered Cook and O'Hara to take one of the buses customarily used in connection with such operations of the crew and to proceed to the former camp site at Dunkirk to procure the equipment which had been left there and to bring it to the camp site at Upper Sandusky and to install it. (R. 46a)

8. When Cook and O'Hara arrived at Dunkirk they did not find the screening equipment, but did find air hoses, pipe couplings and pipe fittings which were required at the camp sites, so they loaded these into the bus and drove by the most direct route toward the Upper Sandisky camp. They were on their way to perform the work assigned to them by Foreman Klinefelter when the accident occurred resulting in their inquries. (R.47a)

Upon the facts as stipulated and upon the policy provisions as admitted, the issue of insurance coverage was tried to the District Court, without a jury. That Court interpreted the phrase "to or from work" to be limited to particular bus trips from a camp site to a job site and return. (R. 83a) However, the Court of Appeals, in a unanimous opinion, held that the finding of the District Court was "clearly erroneous" because in so holding, the District Court had "construed the ambiguous terms of the policy strictly in favor of the insurer rather than in favor of the insured * * *". (Petition, page 25) The Court of Appeals interpreted the phrase "to or from work" to include transporation from one work site to another during the course of the work day.

ARGUMENT

Three simple propositions of law demonstrate the correctness of the decision of the Court of Appeals. (1) This is an Ohio contract to be construed under the state law and no federal question is involved. (2) The settled Ohio law requires a construction strictly against the insurance company. (3) The policy provision is ambiguous and the Court of Appeals correctly applied the Ohio law in construing it.

A. There is no Federal Question Involved

This case involves nothing more than the interpretation of an insurance contract. The contract was made in Ohio, to be performed in Ohio. No Federal constitutional or statutory provision is involved. Therefore, the State law controls its interpretation. Such conclusion, we believe, is inescapable under the decisions of this court.

Erie Rd. Co. v. *Tompkins* (1938) 304 U.S. 64, 78
Griffin, Admr. v. *McCoach, Trustee* (1941) 313 U.S. 498, 504, et seq.
Pink, Supt., etc. v. *A.A.A. Highway Express, Inc., et al.* (1941) 314 U.S. 201, 208-209
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In the case of *Erie Rd. Co.* v. *Tompkins*, supra, this court held that "except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." In the case before the court, neither Federal Constitution nor statute is relied upon by either party.

And, in the case of *Pink, Supt., etc.* v. *A.A.A. Highway Express, Inc., et al.*, supra, this Court held that the local law controlled the construction of a motor vehicle liability

insurance policy issued by a foreign insurance corporation to local residents. This same proposition, partly on the authority of the *Pink* case, supra, was recognized as the law of Ohio in the case of *Keehn, Recr.* v. *Hodge Drive-It-Yourself, Inc.*, supra. As stated in the syllabus by the Ohio Supreme Court, the rule is as follows:

> "2. A contract of insurance issued and to be performed in Ohio by a foreign or alien mutual insurance company authorized to do business in this state to a policyholder resident of this state will be construed and enforced in accordance with the laws of Ohio."

We believe there can be no serious disagreement that the law of Ohio controls the construction of this contract. In fact, this is inferentially conceded by the petition before the court.

B. The Ohio Law Requires a Construction Strictly Against the Insurance Company

It is the law of Ohio (in direct agreement with the decisions of this Court) that an ambiguous insurance contract must be construed liberally in favor of the insured and strictly against the insurer.

American Policyholders Ins. Co. v. *Michota, et al.*, (1952) 156 O.S. 578; 103 N.E. (2d) 817

Bobier, d/b/a Federal Appliance Service Co. v. *National Casualty Co.*, (1944) 143 O.S. 215; 54 N.E. (2d) 798.

Stroehmann v. *Mutual Life Ins. Co. of N. Y.* (1937) 300 U.S. 435, 439

Aschenbrenner v. *United States Fidelity & Guaranty Co.* (1934) 292 U.S. 80, 84-85

Stipcich v. *Metropolitan Life Ins. Co.* (1928) 277 U.S. 311, 322

Preferred Acc. Ins. Co. v. *Rhodenbaugh* (6 Cir. 1947) 160 F. (2d) 832

The above stated rule of construction is practically universal and certainly is the law of Ohio as defined by the highest court in that state. The rule is summarized in paragraph one of the syllabus of the *Michota* case, supra, as follows:

> "1. Policies of insurance which are in language selected by the insurer and which are doubtful or ambiguous in their meaning will be construed most favorably to the insured."

The cited Ohio decisions are in exact agreement with the previous holdings of this Court. In the case of *Stroehmann* v. *Mutual Life Ins. Co. of N. Y.*, supra, this Court quoted one of its earlier decisions in the following terms at page 439 of its opinion:

> "In *Mutual Life Insurance Co.* v. *Hurni Packing Co.*, 263 U.S. 167, 174, this Court said: 'The rule is settled that in case of ambiguity that construction of the policy will be adopted which is most favorable to the insured. The language employed is that of the company and it is consistent with both reason and justice that any fair doubt as to the meaning of its own words should be resolved against it.'"

And in the *Stipcich* case, supra, this Court said at page 322 of its opinion:

> "But narrow and unreasonable interpretations of clauses in an insurance policy are not favored. They are prepared by the insurer and *if, with equal reason, open to two constructions,* that most favorable to the insured will be adopted." (Emphasis added)

This is the rule which has been applied and followed in the Sixth Circuit as evidenced by the *Rhodenbaugh* case, supra. In that case, the Court stated at page 836 of the opinion as follows:

> "If two constructions may reasonably be employed, the courts uniformly enforce the one favorable to the assured."

It was this law that the Sixth Circuit Court of Appeals applied and followed in its determination of the instant case. In the unanimous opinion of the Court of Appeals (Petition, page 22, 25) it is stated as follows:

> "In *Bobier* v. *National Casualty Company*, 143 O.S. 215, 54 N. E. (2d) 798, an excellent and soundly reasoned opinion was written by Judge Bell stating the principle that, in case of ambiguity in the language used by the insurer in an indemnity insurance policy, the language will be construed most favorable to the insured. In the third syllabus to this case, the Supreme Court of Ohio held that where an insurer 'drafts and issues an automobile indemnity policy, providing therein for insurance against liability resulting from injury to or destruction of property, arising out of the ownership, maintenance or use of an automobile including loading and unloading thereof, but fails to define in the policy what shall constitute "loading and unloading," such phrase is ambiguous and will be given the construction most favorable to the insured.' See also *American Policy Holders Insurance Company* v. *Michota*, 156 O.S. 578, 103 N.E. (2d) 817. This court has said: 'If two constructions may reasonably be employed, the courts uniformly enforce the one favorable to the assured.' [Citing cases] *Preferred Acc. Ins. Co.* v. *Rhodenbaugh*, 160 F. (2d) 832, 836 (C.A. 6)."

The Ohio law stating the rules for the construction of insurance contracts is clear and is well settled. The decisions quoted above set out this law without equivocation or confusion. There is no conflict between the Ohio doctrine on this subject and the legal principles applied by this Court in other cases. And the same rule of construction

was followed by the Court of Appeals in interpreting the contract clause in issue.*

C. This Policy Provision is Ambiguous

The petitioner suggests that the problem herein is to determine which interpretaion of the policy is correct. However, the problem is not nearly so difficult. The law merely requires that when policy terms are open to more than one reasonable interprtation, then the interpretation most favorable to the insured must be adopted by the court. *Stipcich* v. *Metropolitan Life Ins. Co.*, supra; *Preferred Accident Ins. Co.* v. *Rhodenbaugh*, supra. Thus, when the Court of Appeals saw that another construction could be reached with "equal reason" it was required to adopt the interpretation most favorable to the insured.

The fact that the two courts below reached different conclusions as to the meaning of this provision demonstrates its ambiguity.

The respondent recognizes that the insurance company might have intended to state and further define in the terms of its policy exactly what the District Court interpreted the policy provisions to mean. The reasoning of the District Court is logical as far as it goes. But on the other hand, there is good basis in reason, and probably better, for the interpretation which the Court of Appeals has placed on the terms of this policy. What the Court of Appeals did is evidenced by the statement made in that Court's opinion (Petition, page 25) as follows:

> "If two constructions may reasonably be employed, the courts uniformly enforce the one favorable to the assured."

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* **See also, Fidelity & Deposit Co. of Maryland vs. Friedlander (6 Cir. 1939) 101 F. 2d 106. Travelers Indemnity Co. vs. Pray (6 Cir. 1953) 204 F. 2d 821**

In so doing, the Court of Appeals followed the Ohio case of *Bobier* v. *National Casualty Company*, supra, which is directly applicable to the facts involved in the instant case. The insurance policy in that case covered liability for damage caused by the insured during "loading and unloading" of the insured's trucks. The evidence disclosed that the insured's employees damaged the hallway of plaintiff's premises while carrying a stove into plaintiff's building after the stove had been unloaded from the insured's truck.

The Supreme Court of Ohio held that the term "unloading" could reasonably be interpreted to extend to the actual delivery of the shipment into the customer's premises, particularly where the insurance company, which drafted the policy, did not attempt to limit or define in the policy what shall constitute "loading and unloading". The rule is summarized in paragraph 3 of the syllabus of the *Bobier* case, supra, at page 215 as follows:

> "3. Where an insurer drafts and issues an automobile indemnity policy, providing therein for insurance against liability resulting from injury to or destruction of property, arising out of the ownership, maintenance or use of an automobile including loading and unloading thereof, but fails to define in the policy what shall constitute 'loading and unloading', such phrase is ambiguous and will be given the construction most favorable to the insured."

The same rule of interpretation is applicable to the instant case. The policy did not limit or define the term "to or from work." If Travelers had intended to limit coverage to particular transportation trips to and from work as distinguished from many others, then it should have specifically defined the limitations in the terms of the policy. It failed to do so, and the term must, therefore, be interpreted to include the varied trips from one work site to another.

Cook and O'Hara had many different work assignments and those would take them to several different locations. The same would be true of the entire track repair and maintenance crew. This is the "work" which was obviously contemplated by the parties to which and from which the users of the buses would be going and coming in the regular course of operation of the track repair and maintenance crew.

The District Court's own distinction in terms can be as readily applied to the respondent's theory of the case as to the theory of the District Court's decision. If the word "work" as used in the insurance policy is interpreted to mean a job site, then coverage would necessarily have to extend to Cook and O'Hara under the facts of this case. The Court of Appeals discussed the error of the District Court on the issue (Petition, pages 26, 27) with clear understanding:

> "Apparently, the district judge considered that the words in the policy, 'to and from work,' meant a specific trip in the bus from the camp site to the job site. These words, however, are not defined in the policy; and the interpretation given them by the District Court would, in our opinion, be strictly against the insured and in favor of the insurer. If the insurer had intended the limited construction, it should have put definitive words into the policy issued by it. The trial court based its interpretation of the policy terms upon the fact, as it stated, that Cook and O'Hara were already 'at work' they could not be going to or from work if they were actually 'at work.' If this were a correct interpretation, there would be small coverage supplied the Pennsylvania Railroad by the policy, for its employees could just as reasonably be said to be 'at work' when they boarded the buses at the Bucyrus camp site.

> "We think that the correct interpretation of the policy is that, when making the trip to Dunkirk, they were traveling in the bus to a job site and that, when making the return trip from Dunkirk to Upper Sandusky, they were making the trip from one job site to another. Such interpretation conforms to the accepted rule of liberal interpretation which has been discussed."

The logic and the law of this case could not be better stated. We believe the Court of Appeals reached the correct conclusion.

CONCLUSION

The Court of Appeals was presented with a very simple issue in this appeal, namely, whether or not more than one interpretation could be given with "equal reason" to the contested contract clause.

The legal principles establishing the rules of construction are not in conflict. There would be no disagreement among any of the courts of the United States on these principles. Considering the words "while being transported to or from work" in their usual and ordinary meaning, it was inescapable that they were, "with equal reason", open to more than one interpretation. When this conclusion was reached, based upon the interpretation of standard English words, the decision of the case was inevitable, dictated by the universal proposition that ambiguous insurance provisions must be construed in favor of the insured.

The Court of Appeals considered and decided the only issue presented. It decided this issue in accordance with the settled law of Ohio. These authorities are in agreement with the prior decisions of this Court and the prior decisions of the Court of Appeals. Therefore, no grounds exist

calling for the exercise of this Court's power of supervision, or requiring this Court to assume jurisdiction of the case.

The petition for certiorari should be denied.

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